REMARKS

Claims 1, 4 and 14 were rejected under 35 U.S.C. § 112. Claims 1-14 were again rejected under 35 U.S.C. § 102(e) as being anticipated by Vallee (US Pat. 6, 894,977)

Applicants previously amended independent claims 1 and 14, along with dependent claim 4 to clarify that the claims were directed to passive connections (taps) for passive testing to distinguish over active testing systems such as that described in Vallee. Applicant is surprised that this clarifying amendment appears to have had the opposite effect on the Examiner's understanding. The rejection under 112 provides an extensive list possible definitions that might be considered, but only if one fails to consider what the term might mean to one of ordinary skill in the art of network testing. Furthermore, this level of confusion could also not be maintained if one refused to consider the claim in light of the specification.

Fortunately, the question is not what might the term "passively" refer to, or its root "passive," but rather what one of ordinary skill in the art would understand the claim language to mean, in light of the specification. One of ordinary skill in the art of network testing would understand that two broad classifications of testing are active testing and passive testing. Active testing refers to "introducing test data and analyzing the results" as contrasted with passive testing which refers to "monitoring the results of a running system without introducing any special test data." (see http://www.techweb.com/encyclopedia/defineterm.jhtml?term=testingtypes for a list of definitions). The abstract from a 1997 IEEE paper entitled Passive Testing and Applications to Network Management states "Thus, we detect faults by examining the input-output behavior without forcing the system to specialized inputs explicitly for testing. Such testing is commonly called passive testing." (see http://portal.acm.org/citation.cfm?id=850935.852443&coll=GUIDE&dl=GUIDE) So without regard to the specification, one of ordinary skill in the art of network testing would understand passive testing, and by basic grammatical conversion the term passively as used in the context of claim to a method or system for monitoring a data transmission. The term is not relative, vague, or otherwise indefinite. It refers to a method of tapping into the physical links without introducing test data, "passive vs active". While one skilled in the art could easily have understood the term, they would be further assisted in their understanding in view

of the specification itself, which at paragraph [0005] discusses active monitoring in the prior art, and then at paragraph [0007] of the summary distinguishes the present invention by reference to a monitoring instrument connected passively to the lines to be monitored.

As one of ordinary skill in the art would understand the meaning of the term "passively" tapping into the physical lines either based on their own knowledge, or at least when the claim language was read in light of the specification, the claim is not indefinite under 35 U.S.C. § 112. Applicant respectfully request that the rejection be withdrawn as to claims 1, 4, 14 and all claims depending there from.

The claims have been amended to clarify that the term tapping was intended to convey that an unobtrusive connection was being made between two network nodes, rather that being incorporated into one of the nodes, as shown by Vallee. Accordingly, the claims have been amended to explicitly state that this is a passive connection (as supported by [0007], rather than the active monitoring described by Vallee, and the present application background at [0005]. Claim 14 was further amended to further clarify that there is not need to re-transmit the data packets.

This amendment clearly distinguishes over Vallee, which does not provide for a monitor to passively connect between two nodes, without being located at a node, and providing monitoring and analysis of the virtual connections without having to actively generate test signals at all. At column 9, lines 60-65 in Vallee it is clear that Vallee is sending test patterns, which the present claims avoid. Accordingly, Applicants respectfully suggest that the claims as amended, including the dependent claims that depend directly or indirectly from the amended claims, are no longer anticipated by Vallee.

The rejection of claim 1 refers to Fig. 9 of Vallee and states that passively tapping would be inherent, and yet Fig. 9 does not illustrate any passively tapping into the physical connection at all. Starting from column 6 and reading through column 7, line 35 it becomes clear that the operation of the physical connections to form a virtual connection is discussed and the creation of a new link etc. but there is no mention, and it would not be inherent to passively tap into these physical connections. While either one of the AIMS may receive the ICPs it is clear that no mention is being made of a monitoring device passively connecting to the physical links.

It is only by intentionally misconstruing or ignoring the limitation of passive versus active testing, that one can attempt to read the present claims onto Vallee. Accordingly, Vallee does not anticipate the claims as amended.

Based upon the arguments provided above, applicants respectfully request that all pending claims be allowed and this application passed on to issuance.

Respectfully submitted,

Andreas Kolbe and Stefan Behrens

By: /Matthew D. Rabdau /

Matthew D. Rabdau
Reg. No. 43026
(503) 627-5068 (Voice)
(503) 627-7119 (Fax)

April 30, 2008

Tektronix, Inc.
P.O. Box 500
Delivery Station 50-LAW
Beaverton, OR 97077

7421 US